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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,698	01/15/2004	Richard R. Rabbat	073338.0150 (03-52019 FLA	8438
5073	7590	03/21/2008	EXAMINER	
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			CHRISS, ANDREW W	
			ART UNIT	PAPER NUMBER
			2619	
			NOTIFICATION DATE	DELIVERY MODE
			03/21/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/759,698

Applicant(s)

RABBAT ET AL.

Examiner

ANDREW CHRISS

Art Unit

2619

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 March 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Chau T. Nguyen/
SPE AU 2619

Andrew Chriss
Examiner
Art Unit: 2619

Continuation of 11, does NOT place the application in condition for allowance because: Regarding rejection of Claims 12-22 under 35 U.S.C. 112, first paragraph, Applicant states that the disclosure provides support for the claimed "computer-readable medium" via the following passage: "some or all of the functionalities of node 12 may be performed by logic encoded in media, such as software and/or programmed logic devices." Applicant further states that said passage explicitly describes computer readable media. However, the cited passage does not provide explicit support for a computer readable media, as one of ordinary skill in the art may interpret "logic encoded in media" and "software" as comprising software, being a set of instructions, printed on a sheet of paper, which is thusly not computer-readable. Further, language "programmed logic device" does not explicitly describe a computer-readable media, as one of ordinary skill in the art may interpret said device to comprise a processor, which is known in the art to be a separate entity than a computer-readable medium (e.g. Chen et al (United States Patent 6,353,393); column 5, lines 28-35).

Applicant's arguments regarding rejection of Claims 1, 8, 9, 23, and 30-31 under 35 U.S.C. 102(e) have been fully considered but they are not persuasive. Regarding Claim 1, Applicant states that Mukherjee fails to teach the claimed limitations "identifying potential nodes in the network that satisfy the timing constraint" and "selecting a protection path...spanning a second set of one or more intermediate nodes, the second intermediate nodes selected from the potential nodes." However, Mukherjee discloses a system that establishes both a primary path and a backup path when a connection request is received from a source to a destination (paragraph 0037). In order to ensure resiliency, the system establishes restorable cycles by "attempting to find a link or series of links to form a backup path" in order to satisfy a requested failure-recovery time (paragraph 0064). Further, when the calculation is complete, "the system selects the section of each restorable cycle as the primary path between the source and destination" (paragraph 0064) (emphasis added). Therefore, Mukherjee teaches the claimed limitations of "identifying potential nodes in the network that satisfy the timing constraint" and "selecting a protection path...spanning a second set of one or more intermediate nodes, the second intermediate nodes selected from the potential nodes." of Claims 1, 8, 9, 23, and 30-31 under 35 U.S.C. 102(e) is maintained.

Applicant's arguments regarding rejection of Claims 7 and 29 under 35 U.S.C. 103(a) have been fully considered but they are not persuasive. Regarding Claims 7 and 29, Applicant states that the Mukherjee-Jaber combination fails to teach "identifying a class of service associated with the working path," "selecting the timing constraint based upon the class of service," or "identifying potential nodes in the network that satisfy [that] timing constraint." As discussed with regards to Claim 1 above, Mukherjee teaches identifying nodes for a protection path based on a specified failure recovery time (paragraph 0064). Jaber teaches class of service capabilities in a transport network, implemented in priority levels (e.g., guaranteed, best effort). Each priority level has a timing constraint associated with it (e.g., guaranteed traffic has a defined time delay). Therefore, Jaber teaches identifying a class of service for a working path in a transport network, and selecting a timing constraint based upon the class of service. Further, the combination of Mukherjee and Jaber teach all of the claimed limitations, with the motivation being to send opaque link state advertisements across the network, thus supporting path selection, as clarified in the grounds of rejection for Claims 7, 18, and 29 above. Therefore, rejection of Claims 7 and 29 under 35 U.S.C. 103(a) is maintained.

Applicant's arguments regarding rejection of Claims 2-6, 10, 11, 24-28, and 33 under 35 U.S.C. 103(a) have been fully considered but they are not persuasive. Applicant argues that the Mukherjee reference fails to disclose all of the limitations of independent Claims 1 and 23. However, Mukherjee teaches all of the limitations of Claims 1 and 23, as described in the grounds of rejection and response to Applicant's arguments above. Therefore, rejection of Claims 2-6, 10, 11, 24-28, and 33 under 35 U.S.C. 103(a) is maintained.